



לע"נ ברוך בענדיט וברכה גרוס ע"ה  
by Mr. & Mrs. Duvy Gross

# The Hakuk Edition English Topics on the Daf

*Dedicated l'refuah sheleima for Yaakov ben Victoria*

By Rabbi Mordechai Papoff

THE SIXTH PEREK OF YEVAMOS IS DEDICATED:

לע"נ גרשון בן החבר מרדכי



YEVAMOS DAF 58 IS DEDICATED:

מרת אסתר יהודית בת ר' שבתי ע"ה למשפחת בוכלער L'zecher Nishmas

## Yevamos Daf 58

Does yibum need witnesses?

At the bottom of amud a, the Gemara is searching for a case of a sotah relevant to a shomeres yavam. Once the yavam is with her, that already constitutes yibum! And it continues with various attempts at a resolution.

The meforshim grapple with an apparent problem – there's a much simpler answer available! According to some Rishonim, yibum must be done with eidim, witnesses to their seclusion. If so, our Gemara could say that sotah is possible by a shomeres yavam if the yavam was with her without eidim? Let's explore this sugya.

The Gemara in Kiddushin 65a states that if a man is mekadesh a woman in the presence of only one witness, we disregard it. Divorce is the same. Based on that, the Ria"z (cited by Shiltei Hagiborim here, Perek 13) says that yibum also must be done with two witnesses to be valid. If not, they cannot

separate afterwards with a get, but still need chalitza.

So too, Tosfos and other Rishonim on Kiddushin 12b assume that yibum needs eidim. They are explaining the same Gemara we had on daf 52, that one who is mekadesh with biyah receives lashes for "pritzus." What exactly is the pritzus? Some say it's because they would need to appoint eidim for biyah. Tosfos asks that yibum is supposed to be done with eidim for the biyah? (Rather, the pritzus is that he begins his relationship with his wife in this fashion.)

The Rema cites this psak (E.H. 166:2; although it's debatable if he holds like this completely, the Beis Shmuel concludes that he does).

But according to this, we have a straightforward case of a shomeres yavam after biyah with the yavam. Why doesn't the Gemara say it?

Indeed, the Gr" a does not side with this opinion, based on this difficulty.

They asked this question to the Rashba (Teshuvos Vol. 4:328), who answered that it doesn't fulfill all the conditions of sotah. It says in the Torah that the sotah was unfaithful "instead of her husband" – implying that she was married at the time. If yibum without eidim is invalid, she was not married to him yet, so she can't be a sotah!

The Rashba then comments that he actually argues with this opinion. The Gemata describes zikah as "a woman acquired to him from heaven," so yibum doesn't need to follow the same rules as kiddushin. Even without witnesses it would be valid. Rav Elchonon explains that since the acquisition works without his doing, eidim are not necessary. Only kinyanim which are carried out by man need witnesses.

A parallel thought by the Mishneh L'melech is that yibum works even by accident or with improper intentions (ones or shogeg). So too, it may well work even without eidim, unlike kiddushin.

Another answer for the Shiltei Giborim's view is found in several Acharonim. Rabbi Akiva Eiger (Mahadura Tinyana 94 and Kamma 222), Keren Orah and others explain that we wouldn't have her drink the sotah waters since we're not sure there was a biyah with her yavam.

Yad Hamelech (Hilchos Yibum 1:1) provides a source for the requirement to have eidim from a later Gemara. On daf 96 it discusses the scenario of another man being mekadesh a shomeres yavam; is it valid? Is the zikah between the yavam and yevama is so potent that other people's kiddushin can't take effect? The Gemara brings two opinions and doesn't pasken on it. According to the option that

it would be valid, that means when they actually do yibum it completes their union to the degree that no other kiddushin can take effect. If so, yibum relates to the halachos of kiddushin and would need eidim just like kiddushin itself. Perhaps, he speculates, the Shiltei Giborim would reckon yibum without eidim as a safek yibum – since this other Gemara is a safek – and after such a yibum both chalitzah and a get would be required.

Based on this, Pischei Teshuvah suggests an additional resolution to our original question. Rav is the one who holds that kiddushin from other men are not valid, as he darshans a possuk on daf 92b. Thus, yibum is not relevant to the halachos of kiddushin, so would not need eidim. And our Gemara is speaking according to the opinion of Rav! That is why we cannot apply the concept of the Shiltei Giborim to here.

Let us conclude with the Keren Orah's deliberations on the subject. The Mishnah on daf 111b rules that if the yavam and yevama lived together for a month, we can assume they already did yibum. This implies that eidim aren't necessary. This can be refuted, however, because some poskim rule that if two people live together as husband and wife, that suffices for eidim (Chelkas Mechokek E.H. 32:20). In another angle, the Gemara in Kiddushin says we don't accept kiddushin done without eidim even if the spouses confirm it. Why not? The reason given is that it effects others adversely – it would make their relatives forbidden to them. Now, by yibum their relatives are already forbidden! So, it may well be argued that yibum could be valid without eidim, if the yavam and yevama concur that it happened.